



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Patrick C. Lynch, Attorney General*

February 1, 2007

Mr. Paul Parker  
The Providence Journal  
75 Fountain Street  
Providence, Rhode Island 02902

Mr. Eric Tucker  
The Associated Press  
10 Dorrance Street, Suite 601  
Providence, Rhode Island 02903

Mr. Stephen A. Kurkjian  
The Boston Globe  
PO Box 55819  
Boston, Mass. 02205

Re: **APRA Request for Station Fire Records (3rd Disclosure)**

Dear Gentlemen:

Enclosed please find documents responsive to the 3<sup>rd</sup> phase of Station fire disclosure. This phase consists of: (1) seven videos, (2) witness statements and supporting documents (5,207 pages), and (3) grand jury testimony (4,878 pages). Before describing these categories more fully below, it is important to touch upon the general reasons for disclosure or non-disclosure.

As you are well aware, this disclosure is being made pursuant to the Access to Public Records Act (hereafter "APRA"), R.I. Gen. Laws § 38-2-1 et. seq. Although certain individuals or entities may assert a greater interest in some or all exempted or redacted records due to either their relationship to a victim(s) and/or their relationship to the federal civil litigation, the APRA does not take these factors into consideration. See e.g., R.I. Gen. Laws § 38-2-3(h) ("No public records shall be withheld based on the purpose for which the records are sought."). Instead, the APRA declares what records should be accessible to the public-at-large, regardless of the requesting person's relationship to the requested records. As such, the APRA declares a stated public purpose and, commensurate with this stated purpose, exempts twenty-four (24) categories

from public disclosure. For the purpose of this particular disclosure phase, the APRA's stated purpose is particularly important; it declares that:

“[t]he public's right to access to public records and the individual's right to dignity and privacy are both recognized to be principles of the utmost importance in a free society. The purpose of [the APRA] is to facilitate public access to public records. It is also the intent of [the APRA] to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.” See R.I. Gen. Laws § 38-2-1.

Consistent with the APRA and its stated purpose, the Department of Attorney General has reviewed documents, in order to determine whether such documents are “public records” and accessible to the public-at-large. In many cases, the APRA exemption most pertinent is R.I. Gen. Laws § 38-2-2(4)(i)(D)(c), which exempts from public disclosure records maintained by law enforcement agencies for criminal law enforcement where such disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” Applying this legal principle to a document-by-document review (over 10,000 documents in this disclosure phase) has been (and continues to be) an enormous challenge. This Department has attempted to make determinations to the best of its ability and consistent with the APRA, its stated purpose, and applicable law. In doing so, this Department has attempted to provide as much information as possible, without invading the personal privacy of the many people referenced and affected by the disclosure of records. More specific exemptions, and the rationale behind these exemptions, are discussed below.

#### **1. Videos (7)**

Three (3) videos consist of additional clips of a band (Human Clay) playing at the Station. These three videos are provided in full and have not been edited. The remaining four (4) videos have been edited as described below.

The Daniel Davidson video is a fifteen (15) second clip, which has not been edited. However, a second Davidson fifteen (15) second clip has not been provided and is exempt from public disclosure. The remaining three (3) videos: (1) Steven McLaughlin, (2) Gregory Best, and (3) WWPB Crime Scene (no audio) are being provided, but have also been edited. In the case of the above video images that have either not been provided and/or have been edited, these images depict victims, and accordingly, are exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(D)(c), (S), the balancing test, and applicable case law.<sup>1</sup> The decision to exempt

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<sup>1</sup> Please see Schedule A for a list of the edits. As Schedule A indicates, videos were reviewed, edited, and then re-reviewed. Often, after re-reviewing a video, additional

victim's images is supported by case law from outside Rhode Island, as well as judicial decisions made with respect to other Station fire matters.

For instance, during the pendency of the Station fire criminal cases, Justice Darigan allowed photographic evidence maintained by the State to be disclosed to attorneys in the federal civil case. Justice Darigan's Order, however, stated that "[t]he State may not release any photographs taken in or at the site of The Station nightclub depicting any victims of the February 20, 2003 fire." See Order dated October 27, 2005. Accordingly, the release of victim's video images would, at the very least, violate the spirit of Justice Darigan's Order, if not the letter. Moreover, in a previous APRA case involving Station fire records, among the records sought were telephone calls involving victims and/or family members of victims. With respect to these victim/family member telephone calls, Justice Pfeiffer determined that these records were exempt from public disclosure pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(D)(c) and noted that:

"[t]o allow access to victim/family members calls would be at variance with the purpose of APRA which recognizes the desirability of preserving individual dignity. This Court cannot conceive of a greater affront to such dignity than permitting others to listen to the anguish that is embodied in such communications." See The Providence Journal v. Town of West Warwick et al., KC 03-207 (July 22, 2004), p. 3.

Other support for this conclusion comes from the United States Supreme Court, which determined that photographic death scene images of President Clinton's legal counsel were not public records and that disclosure would invade the surviving family members' right to privacy. See National Archives and Records Administration v. Favish, 541 U.S. 157 (2003). Accordingly, for the reasons discussed, images showing victims have been edited or redacted.

Lastly, this Department maintains one additional video, the so-called Brian Butler Channel 12 Video. Although this Department was prepared to release portions of this video, its owner, JVL, has asserted its copyright. Accordingly, this Department must exempt this video pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(S), as well as the other statutes referenced above.

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edits were made and these edits are referenced as the second, third, or fourth edits. Edits were performed consistent with R.I. Gen. Laws § 38-2-2(4)(ii) ("any reasonably segregable portion of a public record excluded by this section shall be available for public inspection after the deletion of the information which is the basis of the exclusion").

2. **Witness Statements – 609 Witnesses/5,207 pages**

The enclosed witness statements represent documents associated with 609 different witnesses, totaling 5,207 pages. For ease of the user's reference, documents responsive to each witness were scanned into a separate .pdf file and labeled appropriately by last name. On several occasions, more documents existed than could be scanned. In these cases, there are two .pdf files, the second of which is labeled "cont'd." See e.g., Biechele, Daniel and Beese, Kevin.

Please also note that the instant witness documents represent the first of what is anticipated to be two installments of witness statements. Although this Department would have preferred to release all witness statements at the same time, the reason for this procedure is twofold. First, as discussed in earlier disclosure letters, this Department is reviewing documents on a box-by-box or location-by-location basis. Accordingly, the two installments of witness statements represents the different locations of physical storage. Second, this Department's decision to disclose witness statements in two phases is consistent with this Department's goal to make public records associated with the Station fire publicly accessible in the timeliest manner possible. For purposes of understanding what has been disclosed, and what remains to be disclosed, both this disclosure and the future witness statement disclosure will contain records from witnesses with last names A-Z. In other words, a particular witness may have documents disclosed during this phase and the same witness may have other documents released during a subsequent phase. Of course, a witness may have all documents released during this phase, or a witness may have all documents released during the subsequent phase.

As noted earlier, personal information contained within the witness statements has been redacted pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(A)(I), (D)(c), (S), and the balancing test. This information consists of: home addresses, telephone numbers, social security numbers, account numbers,<sup>2</sup> dates of birth, and employment information. Employment information related to individuals who were witnesses because of their employment, as opposed to individuals or patrons who simply provided their employment information, was not redacted.

Moreover, in furtherance of the APRA, this Department also redacted the specific nature of injury sustained, as opposed to the general nature of injury sustained. In this vein, this Department was guided by the Confidentiality of Health Care Communications and Information Act, R.I. Gen. Laws § 5-37.3-4(22), which states that "[a] hospital may release the fact of a patient's admission and a general description of a patient's condition to persons representing themselves as relatives or friends of the patient or as a representative of the news media." (Emphasis added). Using this law as a guide, we have redacted the specific nature of injuries. Other information redacted under this

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<sup>2</sup> This category consists of: ISP addresses, tax identification numbers, credit card numbers, account numbers, identification numbers, bank account numbers, routing numbers, license numbers, license plate numbers, VIN numbers, title numbers, website addresses, passwords, and email addresses.

category would concern medications, pre-existing medical conditions, and descriptions of emotional trauma.

Although the above exemptions relate to all or most witnesses, several exemptions are particular to only a few witness statements. On several occasions, mug shots were redacted, as well as information related to those who posed for mug shots. This information is exempt pursuant to Setera v. City of Providence, PR 95-29. Also, detailed physical descriptions provided by family members of those who were missing in the hours after the fire (Malloy) were redacted pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(D)(c) and the balancing test, gross sales figures (McLean) were redacted pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(B), and portions of an email pertaining to personal family experiences independent of The Station Fire (Horan, Shamus) were redacted pursuant to R.I. Gen. Laws § 38-2-2(4)(i)(D)(c) and the balancing test. Drivers license photographs, as well as drivers license information, was also redacted. See R.I. Gen. Laws § 27-49-3.1.

### **3. Grand Jury Testimony and Instructions – 4,878 pages**

Although previously denied pursuant to this Department's letter dated November 16, 2006, since this Department's denial, the Presiding Justice has granted the Attorney General's petition to open the grand jury testimony. Accordingly, enclosed is the grand jury testimony and instructions, subject to the same type of redactions discussed above. The testimony and instructions are organized alphabetically, but attached as Schedule B is a listing of the witnesses organized chronologically. Several witnesses were called on multiple occasions and each subsequent appearance is indicated in parentheses.

You should be advised that the first witness' testimony begins on page 5. The first page is a cover sheet, and pages 2-4 consist of Presiding Justice Rodgers briefly addressing the grand jurors assembled at Camp Fogarty to determine whether any jurors had conflicts or potential conflicts concerning the Station fire that could affect their judgment of the facts presented to them. Because the Presiding Justice's remarks do not constitute testimony or instructions within the purview of the Order permitting disclosure, these pages are not included in this disclosure.

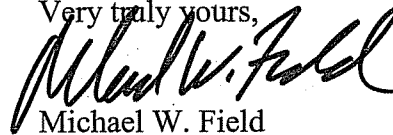
Also, this Department is aware that one tape – Tape 102 – has not been transcribed. During the course of the criminal proceedings, the tape that this Department received from the court – Tape 102 – contained no audible information. Tape 102 includes portions of the August 20, 2003 testimony of Jason Williams, the bass guitar player for the band Tripp, which was touring with Great White at the time of the fire. Tape 102 may also include testimony that preceded Mr. Williams on August 20, 2003, however, this Department will not know for certain what testimony, if any, may have preceded Mr. Williams until Tape 102 is located and transcribed. We are in contact with the grand jury recorder and if the court's records contain Tape 102, it will be transcribed and released.

Lastly, you should be advised that this material is being produced to you in compliance with your request pursuant to APRA. See R.I. Gen. Laws § 38-2-1. Material in this production may be protected by a third party's copyright. Copyright law grants exclusive rights and benefits to the holder of the copyright and can result in penalties to a violator of those rights. This material is being produced in compliance with the APRA for your exclusive and private viewing. This production does **not** allow you to copy, distribute, publish or otherwise use any of this material in violation of a third party's copyright. Should you desire to do more than exclusively and privately view any copyrighted material produced pursuant to the APRA, it is your obligation to obtain any additional rights from the holder(s) of the copyright(s).

Also, although this Department has done its very best to provide all public records responsive to this phase (and redact only those portions permissible or required pursuant to the APRA or other applicable law), confirmation can only be achieved through your review of this material. If you believe – during this disclosure phase or any past or future disclosure phase – that material has improperly been redacted or inadvertently not provided, please contact this Department so that we may review your inquiry and ensure that this Department's response is appropriate. At the conclusion of the disclosure process we will address any of these issues.

We thank you for your patience through this process.

Very truly yours,



Michael W. Field

Special Assistant Attorney General

MWF/cc

cc: Kristin Rodgers, Esq.  
Carol Head, Esq.

# **Schedule A**

## **List of Edits Done**

### **Video Files**

#### **Gregory Best Video**

First Edit: (6:30-6:44; 13:22-13:28; 14:00-14:05)

Second Edit: (6:48-6:51)

Third Edit: (13:05-13:08)

Fourth Edit (12:03-12:14)

#### **Steve McLaughlin Video**

First Edit: (0:13-0:21; 0:23-0:44; 0:59-1:12; 1:27-1:35; 1:43-1:47; 1:53-2:00; 2:06-2:12;  
5:47-5:53; 6:11-6:17; 6:27-6:32; 11:59-12:01; 12:47-12:52; 13:01-13:04;  
13:40-13:51; 14:26-14:29)

Second Edit: (5:29-5:34; 6:44-6:47; 9:26-9:32; 11:03-11:08; 12:47-12:50; 13:32-13:35)

Third Edit (2:37-2:39; 13:17-13:19)

#### **WWPD 35mm Crime Scene**

First Edit: (0:00-0:45; 2:55-2:58; 3:13-3:37; 3:49-6:10; 11:37-11:38; 11:52-11:55; 12:02  
12:05; 12:18-12:43; 12:45-13:05; 13:12-13:19; 13:26-13:32; 13:51-13:59;  
14:20-14:29; 14:34-14:38)

Second Edit: (2:36-3:25; 3:37-4:09; 7:44-7:45; 8:37-8:44; 9:06-9:22)

Third Edit: (2:09-2:16)

Fourth Edit (4:32-4:34)

## Schedule B

### Volume 1 witness list

1. Studley, Raymond
2. Azverde, Keith
3. Powers, Eric
4. Azverde, Keith
5. Filice, David
6. Azverde, Keith
7. Barry, Kevin
8. Killian, John
9. Link, Kristina
10. Ochs, Catherine
11. Link, Kristina
12. Mellini, John
13. Mellini, Julie
14. Clayton, David
15. WJAR Subpoenas

### Volume 2 witness list

1. Vieira, Scott
2. Gershelis, Irina
3. Winman, George
4. Mowry, Robert
5. Ownes, Irving
6. DiMascolo, Michael
7. James, Richard
8. Stone, David
9. Clayton, David
10. Julian, Howard
11. Lynch, John
12. Appolonia, Gary
13. Custodial, Chad
14. Valley, Robert
15. Conti, Robert
16. Conti, Nathan
17. Myers, Timothy
18. Tyler, Rev
19. Vierra, Sean

### Volume 3 witness list

1. Medeiros, Michael
2. Julian, Howard
3. Stein, Harry
4. Travis, Curtis
5. Davidson, Frank
6. Dean, Paul
7. Marion, Michael
8. Pate, Steven
9. Lage, Robert
10. Arpin, John
11. Ortoleva, Christine
12. Vierra, Shawn
13. DelSignore, Joseph
14. Ducharme, Edward

### Volume 4 witness list

1. Santoro, Timothy
2. Cook, Lewis
3. Gomes, Alfred
4. Koehler, Cliff
5. Jandron, Michael
6. Azverde, Keith
7. Coutu, Roland
8. Vanner, Paul



Volume 5 witness list

1. Azverde, Keith
2. Reis, Donna
3. Choquette, Jennifer
4. Wood, Jessica
5. McCrudden, Brian
6. Arnold, Timothy
7. Coutu, Ronald
8. Essex Insurance
9. American Foam
10. Kendall, Mark
11. Prudhomme, Al

Volume 7 witness list

1. Davidson, Daniel
2. Dermanouelian, Aram
3. Bettencourt, Anthony
4. Mowry, Robert
5. Butler, Brian
6. Rezendes, John
7. Coutu, Roland
8. Casilli, Brian
9. Sassi, Janice

Volume 9 witness list

1. Murray, Steven
2. Coutu, Roland
3. Laposata, Elizabeth Dr.
4. Phelps, Thomas
5. Grasso, Robert
6. Lemoi, Raymond
7. Byrnes, Patricia
8. Winman, George
9. St. Jean, Roger
10. Hannon, Thomas
11. Bast, Randall
12. Cormier, Donna
13. Giamei, Mario

Volume 6 witness list

1. Vanner, Paul
2. Bevilacqua, Joseph
3. Clark, Jordan
4. Appolonia, Gary
5. Gately, Jeremy
6. Malinowski, Jill
7. McGinn, David
8. Scarpetti, Steven
9. Sassi, Janice
10. DerManouelian, Aram
11. Dubeau, Joseph
12. Warner, Barry
13. Mowry, Robert

Volume 8 witness list

1. Prudomme, Charlene
2. Hutchins, Robert
3. Barber, Joseph
4. Bardsley, Douglas
5. McNally, Jeffrey
6. Larocque, Dennis
7. Castle, Walter, Jr.
8. Peiczarek, John
9. Coutu, Roland

Volume 10 witness list

1. Williams, Jason
2. Casilli, Brian
3. O'Conner, Michael
4. Beese, Kevin
5. Muto, John
6. Casilli, Brian
7. Czarnopys, George
8. Lund, Joseph Sr.
9. Beese, Kevin

Volume 11 witness list

1. Casilli, Brian
2. Grand Jury Subpoena
3. Vargas, Raul
4. Conte, Thomas
5. Ferreira, Barry
6. Beineke, Gary
7. Beineke, Pam
8. Coutu, Roland
9. Julian, Howard
10. Coutu, Roland
11. Owens, Irving
12. Coutu, Roland

Volume12 witness list

1. Kosanke, Kenneth
2. Zicherman, Joseph
3. Coutu, Roland
4. Exhibit Review
5. Dillon, Scott
6. Jury Instructions
7. Grand Jury Deliberation &  
Return of Indictment